

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

1. W.A. DREW EDMONDSON, in his capacity as)
ATTORNEY GENERAL OF THE STATE OF)
OKLAHOMA and OKLAHOMA SECRETARY)
OF THE ENVIRONMENT C. MILES TOLBERT,)
In his capacity as the TRUSTEE FOR NATURAL)
RESOURCES FOR THE STATE OF)
OKLAHOMA,)

Plaintiff,)

v.)

Case No. 05-CV-0329-TCK-SAJ

1. TYSON FOODS, INC.,)
2. TYSON POULTRY, INC.,)
3. TYSON CHICKEN, INC.,)
4. COBB-VANTRESS, INC.,)
5. AVIAGEN, INC.,)
6. CAL-MAINE FOODS, INC.,)
7. CAL-MAINE FARMS, INC.,)
8. CARGILL, INC.,)
9. CARGILL TURKEY PRODUCTION, LLC,)
10. GEORGE'S INC.,)
11. GEORGE'S FARMS, INC.,)
12. PETERSON FARMS, INC.,)
13. SIMMONS FOODS, INC., and)
14. WILLOWBROOK FOODS, INC.,)

Defendants,)

TYSON FOODS, INC., TYSON POULTRY, INC.,)
TYSON CHICKEN, INC., COBB-VANTRESS,)
INC., GEROGE'S INC., GEORGE'S FARMS,)
INC., PETERSON FARMS, INC., SIMMONS)
FOODS, INC., and WILLOW BROOK FOODS,)
INC.,)

Third-Party Plaintiffs,)

v.)

1. CITY OF TAHLEQUAH,)
2. CITY OF WESTVILLE,)
3. CITY OF WATTS,)

4. SEQUOYAH FUELS INTERNATIONAL,)
5. EAGLE NURSERY, LLC a/k/a MIDWESTERN)
- NURSERY CONTAINERS DIVISION,)
6. PARK HILL PLANTS & TREES, INC.,)
7. GREENLEAF NURSERY CO., INC.,)
8. NORTHLAND FARMS, LLC,)
9. WILLIAM D. LANGLEY,)
10. RONALD LEE and LINDA S. FIDLER,)
11. FIDLERS BEND FARMS & TRADING CO.,)
- LLC,)
12. DARRELL MOSS,)
13. DARRYL CATES,)
14. MILDRED RAYLS WOODWARD,)
15. ANCIL MAGGARD,)
16. BRYAN SAND AND GRAVEL, INC.,)
17. JESSE T. PROCTOR,)
18. LENA and GARNER GARRISON,)
19. BRAZIL CREEK MINERALS, INC.,)
20. JULIE A. and JOHN E. COTHERMAN,)
21. HELEN WATTS, Trustees of THE HELEN)
- WATTS REVOCABLE TRUST,)
22. SIMP WATTS, Trustee of THE SIMP WATTS)
- REVOCABLE TRUST,)
23. T&M SAND AND GRAVEL, INC.,)
24. HOBY FERRELL,)
25. GREATER TULSA INVESTMENTS, LLC,)
26. WAUHILLA OUTING CLUB,)
27. ONE DEGREE LAWN CARE AND)
- LANDSCAPING,)
28. BIG JOHN'S,)
29. PRO LAWN SERVICES, INC.,)
30. THORNTON LAWN & EXTERMINATING,)
- INC.,)
31. SPRING HOLLOW FEED MILL, INC.,)
32. TURF PROFESSIONAL,)
33. CHERRY SPRINGS GOLF CLUB, INC.,)
34. LAKE COUNTRY RESORT, INC., d/b/a)
- TENKILLER GOLF CLUB,)
35. MILLIE SERATT TRUST,)
36. ILLINOIS RIVER RANCH RECREATIONAL)
- VEHICLE PARK PROPERTY OWNERS)
- ASSOCIATION,)
37. ILLINOIS RIVER RANCH PROPERTY)
- OWNERS ASSOCIATION,)
38. FLINT RIDGE PROPERTY OWNERS)
- ASSOCIATION, INC.,)

39. MARJORIE A. GARMAN,)
40. RIVERSIDE RV RESORT AND)
CAMPGROUND, LLC,)
41. FRATES PROPERTIES, INC.,)
42. BRIAN R. and MARY C. BERRY, individually)
and d/b/a TOWN BRANCH GUEST RANCH,)
43. AUSTIN L. and LESLIE A. BENNETT,)
individually and d/b/a EAGLE BLUFF RESORT,)
44. BARNACLE BILLS MARINA, LLC,)
45. PHILIP L. and CHERYL D. BEAMAN,)
46. FALCON FLOATS, INC.,)
47. NORMA J. BROOKS, Individually and d/b/a)
COOKSON VILLAGE AND CABINS,)
48. BURNT CABIN MARINA and RESORT, LLC,))
49. FIN & FEATHER RESORT, INC.,)
50. JAMES and DOROTHY GENE LAMB,)
51. STRAYHORN LANDING MARINA &)
GENE'S SCUBA SALES,)
52. PINE COVE MARINA & CLEARWATER)
CAFE', INC.,)
53. JOHN T. POSEY, JR. TRUST, individually)
and d/b/a MEADOW PARK RV PARK,)
54. SNAKE CREEK MARINA, LLC,)
55. ELK CREEK LANDING,))
56. FLINTRIDGE PARK, LLC,)
57. BILL STEWART, individually and d/b/a)
DUTCHMAN'S CABINS,)
58. TOM COTTON, individually and d/b/a)
CHICKEN CREEK VILLAGE STORE,)
59. JOHN T. POSEY, JR.,)
60. GRANDE VILLA, INC.,)
61. BISHOP H. and WILMA F. WADSWORTH,)
individually and d/b/a COOKSON LOG)
CABIN MOTEL,)
62. ARROWHEAD CAMP, INC.,)
63. DAVID and BRENDA SPEARS,)
64. THUNDERBIRD RESORT, INC.,)
65. WAR EAGLE FLOATS, INC.,)
66. VERAMAN and BILLIE DAVIS,)
67. SNAKE CREEK WILDERNESS)
DEVELOPMENT, INC.,)
68. SIXSHOOTER RESORT AND MARINA,)
INC.,)
69. VIRGINIA M. and ARCHIE R. PEYTON,)
JR., as Trustees of THE PEYTON FAMILY)
TRUST, individually and d/b/a PEYTON'S)

PLACE,)
70. JOHN T. and GEORGE CRIPPS,)
71. EURMA WHITE, individually and d/b/a)
BARON FORK CREEK CAMP,)
72. EWELL VAN and ALICE L. EARL,)
individually and d/b/a PETTIT BAY CABINS)
& GROCERY,)
73. KEVIN R. and BARBARA L. KELLEY,)
individually and d/b/a DIAMOND HEAD)
RESORT,)
74. KENNETH D. and JANE T. SPENCER,)
individually and d/b/a SPENCER RIDGE)
RESORT,)
75. JAMES C. GEIGER, individually and d/b/a)
SPENCER RIDGE RESORT,)
76. JACK and BRENDA K. SPEARS, individually)
and d/b/a PINE VALLEY CABINS,)
77. STEPHEN R., JENNI and BRIAN R.)
HAMRICK, individually and d/b/a HANGING)
ROCK CAMP AND STORE,)
78. TAHLEQUAH LIVESTOCK AUCTION, INC.,)
79. GORDON W. and SUSANN CLINTON,)
80. PERRY and NORMA WILLIAMS,)
81. TWIN CITY CONSTRUCTION, INC.,)
82. EDDINGS ELMO,)
83. CHARLINE EDDINGS LONG,)
84. LADONNA EDDINGS CAVINESS,)
85. THOMAS E. EDDINGS,)
86. SUE EDDINGS SHANKLE,)
87. BONNIE EDDINGS KILE,)
88. FLOYD SIMMONS,)
89. WILLIAM J. and CHERRIE HOUSE,)
90. RICKY and TONYA FOWLER,)
91. BILLY D. and NORMA GLENN,)
92. DAVID ALBERT and BOBBIE ANN)
STRATTON,)
93. ROBERT A. and SYLVIA S. SMITH,)
Trustees of THE ROBERT A. SMITH TRUST,)
94. ANNA MARIE SANDERS,)
95. DANNY E. and CAROLYN HIX,)
96. DAVID R. and ROBIN L. WOFFORD,)
97. HASKELL L. BROWN,)
98. JOHN NICKLE,)
99. J5 RANCH, LLC,)
100. TOM TATE,)
101. SKELLY RANCH, INC.,)

102. GENE and LORENE COLBURN,)
103. TRUSTEES OF THE JOHN E. AND)
VIRGINIA W. ADAIR FAMILY REVOCABLE)
TRUST,)
104. JOHN W. and VIRGINIA W. ADAIR,)
105. CLARE LOUISE WELLS, individually and)
d/b/a MX RANCH,)
106. LOUISE SQUYRES, individually and d/b/a)
MX RANCH,)
107. SUZANNE M. ZEIDERS,)
108. BOBBY and MARIAN WILLIAMS,)
individually and d/b/a WILLIAMS DAIRY,)
109. BILLY SIMPSON,)
individually and d/b/a SIMPSON DAIRY,)
110. RAY DEAN and DONNA DOYLE,)
individually and d/b/a SIMPSON DAIRY,)
111. CLIFTON WILLIAMS, individually and d/b/a)
WILLIAMS DAIRY,)
112. JERRY D. and CHRISTINA WILLIAMS,)
individually and d/b/a SIMPSON DAIRY,)
113. DARRELL and DIANNA GUFFEY,)
individually and d/b/a SELDON REST DAIRY,)
114. LARRY R. and CAROLYN R. LOCKWOOD,)
115. CHARLES W. and KIMBERLEE WILSON,)
116. WILLIE and ELISE TARRANCE,)
117. ILLINOIS RIVER VALLEY NURSERY,)
INC.,)
118. KERMIT and KATHERINE BROWN,)
119. DEAN WILMOTH,)
120. KATHERINE L. and KEVIN W. TYE,)
121. THE HAYES FAMILY LIMITED)
PARTNERHSIP,)
122. FLINT CREEK FARM, LLC,)
123. JAMES THOMAS and ERIN JONES,)
124. TIM and ISABEL BAKER CO-TRUSTEES)
OF THE TIM AND ISABEL BAKER TRUST,)
125. DALE E. and ELLEN MATTHEWS, CO-)
TRUSTEES OF THE DALE E. MATHEWS)
TRUST,)
126. CARL MERSEBURGH,)
127. GAIL B. WILTON,)
128. ROGER K. and LINDA MATHIS CANADA,)
129. BILLIE D. HOWARD,)
130. RICHARD M. TAYLOR,)
131. IVAN MARION,)
132. DANIEL L. PARKER,)

133. BARTOW and WANDA HIX,)
 134. RICKEY JOE and RITA HIX,)
 135. JERRY W. HARE, Trustee of JERRY)
 WAYNE HARE REVOCABLE TRUST,)
 individually and d/b/a CRYSTAL CREEK)
 RANCH,)
 136. JERRY WAYNE and MARY JO HARE,)
 individually and d/b/a CRYSTAL CREEK RANCH)
 137. MARY JO HARE Trustee of MARY JO)
 HARE REVOCABLE TRUST and d/b/a)
 CRYSTAL CREEK RANCH,)
 138. ANTHONY WAYNE HARE, individually)
 and d/b/a CRYSTAL CREEK RANCH,)
 139. FARRELL and JACKIE HAMM,)
 140. TONY MARCUS and LAURA JANE HAMM)
 141. TOM and DARYLENE HAMM,)
 142. JIM R. BAGBY,)
 143. JERRY and ANN MEANS,)
 144. JERRY and DOROTHY ANN MEANS,)
 Trustees of THE DOROTHY ANN MEANS)
 TRUST,)
 145. JERRY and DOROTHY ANN MEANS,)
 Trustees of THE JERRY L. MEANS TRUST,)
 146. RONALD ALLEN and COLLEEN BROWN,)
 147. ALFRED E. and CAROLYN S. HEMBREE,)
 148. STEVEN WESLEY CAIN,)
 149. WANDA L. DOTSON,)
 150. RIVER FARMS OF TAHLEQUAH, LLC,)
 151. EVELYN PROCTOR,)
 152. MARK and MELISSA KELLY,)
 153. PHILLIP DEWAYNE PROCTOR,)
 154. M. WESLEY and BROOKS P. CONNOR,)
 155. VERLIE B. SECRATT as Trustee of the)
 VERLIE BERNIECE SECRATT REVOCABLE)
 TRUST,)
 156. JAMES D. and SUSAN MORRISON,)
 157. KENNETH E. DAVIS,)
 158. TUMBLING T. BAR, LLC,)
 159. EUGENE DILL, individually and d/b/a)
 COOKSON COUNTRY STORE AND CABINS,)
 160. DORIS MARES, individually and d/b/a)
 COOKSON COUNTRY STORE AND CABINS)
 161. JOHN AND/OR JANE DOE(S) 1 through 150,))
)
 Third-Party Defendants.)

**UNOPPOSED MOTION BY “THE BERRY GROUP”
FOR ENLARGEMENT OF TIME TO RESPOND TO THIRD-PARTY COMPLAINT**

Pursuant to Fed.R.Civ.P. 7(b) and Local Civil Rule 7.1(g), the Third-Party Defendants who are identified herein and who will be collectively referred to as “The Berry Group” of Third Party Defendants¹ request that this Court issue an Order granting them an enlargement of time during which they must respond to the Third-Party Complaint (Dkt. #80). Counsel for The Berry Group has conferred with designated counsel for the Third-Party Plaintiffs, who has authorized moving counsel to advise the Court that the Third-Party Plaintiffs do not object to the relief requested herein. Third-Party Plaintiffs have agreed that the current members of The Berry Group may have until May 8, 2006, if necessary, to respond to the Third-Party Complaint.

1. This motion is filed on behalf of the following Third-Party Defendants, who are currently members of and collectively referred to as “The Berry Group” of Third-Party Defendants:

<u>Defendant #</u>	<u>Third-Party Defendant</u>
42	Berry, Brian R. and Mary C. Berry, individually and dba Town Branch Guest Ranch
47	Brooks, Norma, individually and dba Cookson Village and Cabins
97	Brown, Haskell L.
128	Canada, Roger K. and Linda
33	Cherry Springs Golf Club, Inc.
102	Colburn, Gene and Lorene
154	Conner, M. Wesley and Brooks P.
38	Flint Ridge Property Owners Association, Inc.
91	Glenn, Billy D. and Norma
113	Guffey, Darrell and Dianna, individually and dba Seldom Rest Dairy
138	Hare, Anthony Wayne, individually and dba Crystal Creek Ranch

¹ The constituency of The Berry Group of Third-Party Defendants will almost certainly be increasing, as the Third-Party Plaintiff are continuing to serve process on named Third-Party Defendants.

<u>Defendant #</u>	<u>Third-Party Defendant</u>
135	Hare, Jerry W., Trustee of Jerry Wayne Hare Revocable Trust, individually and dba Crystal Creek Ranch
136	Hare, Jerry Wayne and Mary Jo, individually and dba Crystal Creek Ranch
137	Hare, Mary Jo, Trustee of Mary Jo Hare Revocable Trust and dba Crystal Creek Ranch
99	J5 Ranch, LLC
152	Kelly, Mark and Melissa
125	Mathews, Dale E. and Ellen, Co-Trustees of the Dale E. Mathews Trust
143	Means, Jerry and Ann
144	Means, Jerry and Dorothy Ann, Trustees of the Dorothy Ann Means Trust
35	Mille Seratt Trust
12	Moss, Darrell
98	Nickel, John
6	Park Hill Plants & Trees, Inc.
132	Parker, Daniel L.
151	Proctor, Evelyn
153	Proctor, Phillip Dewayne
155	Secratt, Verlie B., as Trustee of the Verlie Berniece Secratt Revocable Trust
31	Spring Hollow Feed Mill, Inc.
116	Tarrance, Willie and Elise
108	Williams, Bobby and Marian, individually and dba Williams Dairy
111	Williams, Clifton, individually and dba Williams Dairy
112	Williams, Jerry D. and Christina, individually and dba Williams Dairy
115	Wilson, Charles W. and Kimberlee

2. The current members of The Berry Group of Third-Party Defendants have received suit papers at various times under various circumstances. The earliest day by which any member of The Berry Group is currently required to respond to the Third-Party Complaint is today, April 6, 2006.

3. In the interest of coordination and efficiency among all parties and judicial economy, current members of The Berry Group request that the deadline for them to respond to Third-Party Complaint be extended until May 8, 2006.

4. This is the first request for an extension of time sought by any member of The Berry Group, and it is sought in good faith and not for the purpose of delay. Counsel for The Berry Group

need additional time within which to complete their review and investigation of Third-Party Plaintiffs' claims, to confer with client representatives, and to prepare and file appropriate responses. Members of the Berry Group reserve all defenses, including any deficiencies in the service of process.

5. This action is not presently set for trial and therefore granting this Motion will not delay or adversely affect any trial date.

WHEREFORE, the above named members of The Berry Group of Third-Party Defendants request that this Court allow them until May 8, 2006 to file their responsive pleadings to the Third-Party Complaint.

Respectfully submitted,

s/R. Jack Freeman

R. Jack Freeman

Okla. Bar No. 3128

E-mail: jfreeman@grahamfreeman.com

Tony M. Graham

Okla. Bar No. 3524

E-mail: tgraham@grahamfreeman.com

GRAHAM & FREEMAN, PLLC

6226 E. 101st Street, Suite 300

Tulsa, Oklahoma 74137

Telephone: 918- 298-1716

Facsimile: 918- 298-1728

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of April 2006, I electronically transmitted the foregoing Unopposed Motion by “The Berry Group” for Enlargement of Time to Respond to Third-Party Complaint using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Jo Nan Allen
Frederick C Baker
Tim Keith Baker
Vicki Bronson
Paula M Buchwald
Louis Werner Bullock
W A Drew Edmondson
Delmar R Ehrich
John R Elrod
Bruce Wayne Freeman
Richard T Garren
Dorothy Sharon Gentry
Robert W George
James Martin Graves
Robert Park Medearis, Jr
James Randall Miller
Robert Allen Nance
George W Owens
David Phillip Page
Marcus N Ratcliff
Robert Paul Redemann
Melvin David Riggs
Randall Eugene Rose
Patrick Michael Ryan
Robert E Sanders
David Charles Senger
Colin Hampton Tucker
John H Tucker

Thomas James Grever
Jennifer Stockton Griffin
John Trevor Hammons
Michael Todd Hembree
Theresa Noble Hill
Philip D Hixon
Mark D Hopson
Kelly S Hunter Burch
Stephen L Jantzen
Bruce Jones
Jay Thomas Jorgensen
Raymond Thomas Lay
Nicole Marie Longwell
Archer Scott McDaniel
Kenneth Edward Wagner
Elizabeth C Ward
Sharon K Weaver
Timothy K Webster
Gary V Weeks
Adam Scott Weintraub
Terry Wayen West
Edwin Stephen Williams
Douglas Allen Wilson
Lawrence W Zeringue
Linda Martin
Chris A. Paul
J. Ron Wright

I hereby certify that on the 6th day of April 2006, I served the same document by:

 X U.S. Postal Service

 In Person Delivery

 Courier Service

 E-Mail

on the following who are not registered participants of the ECF System:

John E Adair
Rt 2 Box 1160
Stillwell, OK 74960

John E. and Virginia W. Adair Family Trust
Rt 2 Box 1160
Stillwell, OK 74960

Virginia W Adair
Rt 2 Box 1160
Stilwell, OK 74960

William H Narwold
Motley Rice LLC (Hartford)
20 Church Street, 17th Floor
Hartford, CT 06103

Thomas C. Green
Sidley Austin Brown & Wood LLP
1501 K St. NW
Washington, DC 20005

C Miles Tolbert
Secretary of the Environment
State of Oklahoma
3800 North Classen
Oklahoma City, OK 73118

Date: April 6, 2006

s/R. Jack Freeman
R. Jack Freeman
Okla. Bar No. 3128
E-mail: jfreeman@grahamfreeman.com
GRAHAM & FREEMAN, PLLC
6226 E. 101st Street, Suite 300
Tulsa, Oklahoma 74137
Telephone: 918- 298-1716